

GERALD L. CHRISTENSEN  
EDWARD C. GREEN

IBLA 77-73, 77-98

Decided June 6, 1977

Appeals from decisions of New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease NM 28877 and dismissing a protest against issuance of the lease.

Affirmed in part; set aside and remanded in part.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Applications: Drawings

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits a state prefix in the parcel number, the lease offer is properly rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Applications: Drawings

Where an applicant fails to include the state prefix of the parcel number on an oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer is properly rejected whether the defect is discovered before or after the drawing.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Cancellation -- Oil and Gas Leases: First Qualified Applicant

Improper issuance of a noncompetitive oil and gas lease in response to a

defective drawing entry card in the simultaneous filing procedure does not foreclose the right of the second drawn applicant whose drawing entry card was complete when filed to a lease for the parcel named; the erroneously issued lease must be cancelled, and upon cancellation, the second drawee must be awarded a lease to the parcel, all else being regular.

APPEARANCES: Don M. Fedric, Esq., and George H. Hunker, Jr., Esq., Roswell, N.M., for Christensen; Edward C. Green, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gerald D. Christensen appeals from cancellation of noncompetitive oil and gas lease NM 28877 issued November 1, 1976, in response to his first-drawn drawing entry card (DEC) for parcel NM 1005 in the August 1976 simultaneous filing procedure.

Edward C. Green appeals from rejection of his protest against issuance of a lease in response to the first-drawn DEC of Christensen.

The facts are as follows:

Parcel NM 1005 (S 1/2 NW 1/4, S 1/2 SW 1/4 sec. 8, T. 15 S., R. 33 E., N.M.P.M., 160 acres), on the August 1976 list of lands available for oil and gas lease filing pursuant to 43 CFR 3112.1-2 in the BLM State Office for New Mexico, received 848 DEC's. As a result of a public drawing, first priority was given to the DEC from Gerald L. Christensen, second priority to the DEC from Edward C. Green, and third priority to the DEC from Delores B. Pollare. 43 CFR 3112.2-1(a)(3).

The record does not show any notice from BLM to Christensen regarding his first priority for parcel NM 1005 nor any request that he pay the first year's rental. 43 CFR 3112.4-1. The record does show that, on September 23, 1976, Green submitted payment of \$80, which BLM erroneously credited to the account of Christensen. Thereafter, following receipt of a negative structure report from the Geological Survey as of October 15, 1976, lease NM 28877 to Christensen was executed by an authorized employee of BLM on October 20, with an effective date of November 1, 1976. At that time, the DEC of Green was returned to him, with advice that lease NM 28877 for Parcel NM 1005 had been issued to the first priority.

By decision of October 28, 1976, the State Office canceled lease NM 28877 for the reason that Christensen had not paid any rental as well as for the reason that the DEC was not completed in accordance with instructions in the August 1976 list of lands available. 1/

On November 5, Green, within the 30-day period following receipt of his rejected DEC, protested the issuance of a lease to Christensen, asserting his priority as number two drawee was paramount because of the deficiency in the Christensen DEC as well as because he, Green, had paid rental in anticipation that his DEC would be the card accepted for parcel NM 1005, and that BLM had erroneously applied his money to the credit of Christensen.

Christensen filed a notice of appeal on December 9, 1976. On December 15, 1976, BLM dismissed the protest of Green for the reason that a lease had been issued to Christensen, albeit in error, and stated that the subject parcel would be reported on a future simultaneous list after cancellation of the lease, NM 28877, became final. On December 30 Green appealed.

Christensen's appeal suggests that the cancellation of the lease is based on a strained, narrow construction of the regulations and is unreasonable, as well as abusive of the administrative process.

This Board has employed strict construction in its interpretation of the requirement in 43 CFR 3112.2-1(a) that a simultaneous oil and gas drawing entry card be signed and fully executed. The Board has affirmed rejection of DEC's which omitted the date

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1/ "Filings must be made on simultaneous oil and gas drawing entry card, Bureau Form 3112-1 (May 1974 or later). Under the new parcel numbering system, all drawing entry cards must show the State Code as prefix and part of the parcel number. New Form 3112-1 has been re-designed to accommodate the new parcel numbering system. If the old entry cards are used (May 1974 or later), the State Prefix must be manually inserted and made a part of the number for each parcel. Failure to comply with the new parcel numbering system will result in rejection of offer and the filing fee will be retained. Filings must be accompanied by a \$10 filing fee and must otherwise conform with the requirements of the regulations in 43 CFR 3112. The filing fee may be paid in cash or by money order, bank draft, bank cashier's check or check. If no offers are received during the simultaneous filing period, the land will thereafter be subject to lease by the first qualified applicant."

of execution of the card, John R. Mimick, 23 IBLA 107 (1976); the name of the state in which the parcel of land is located, Eleanor R. Neuberger, 29 IBLA 168 (1977), Ray Granat, 25 IBLA 115 (1976); the omission of a zip code, Beverly J. Steinbeck, 27 IBLA 249 (1976); and the omission of the state prefix, Etta D. Harris, 29 IBLA 259 (1977). Harris is precisely in point with the case here presented.

Examination of the Christensen DEC shows that it is on Form 3112-1 (February 1976). In the space afforded for "parcel number applied for" only the figures "1005" appear. Without question, Christensen did not include the prefix "NM" which appeared in the posted list, and to which the instruction at the head of the list specifically made reference. Christensen concedes he omitted the state prefix but argues it is de minimis. We hold otherwise.

[1, 2] Omission of the state prefix mandates rejection of the Christensen DEC because the parcel number is incomplete and the drawing entry card is not fully executed. Where an applicant fails to include the state prefix of the parcel number on an oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and such offer must be rejected without priority, whether the defect is discovered before or after the drawing. Etta D. Harris, supra.

Inasmuch as the DEC of Christensen was incomplete and not entitled to any priority against the other cards for parcel NM 1005, it was patently in error for BLM to have purported to issue lease NM 28877 in response to the DEC of Christensen. The Secretary has the authority to cancel any lease issued whether the error resulted from inadvertence by his subordinate employees in BLM and whether or not there is a timely proceeding instituted by a competing applicant. W. H. Bird, 72 I.D. 287 (1965). Similarly, the Mineral Leasing Act provides that if the Secretary decides to lease a parcel of federal land, he must issue the lease to the first qualified applicant therefor. 30 U.S.C. § 226(c). It is well established that an incomplete application does not make the applicant thereof "qualified" to receive a lease where third party rights are outstanding. It is clear that the Secretary has authority to administratively cancel a lease for invalidity at its inception. Boesche v. Udall, 373 U.S. 472 (1963). So, in this case, cancellation of the lease NM 28877 to Christensen was correct.

We look now at the appeal by Green. The erroneous action by BLM in issuing a lease to Christensen in this case has deprived Green of a lease to which he was entitled as the applicant under

the first application filed in full conformance with the regulations. Whether to offer land for lease is a discretionary matter with the Secretary (or his delegate). But having invited applications for a noncompetitive oil and gas lease (and the status of the land not having changed), he had no discretion as to selecting the lessee; the statute awards the lease to the first qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Where the first drawn DEC for a noncompetitive oil and gas lease on a specified parcel of land is not in compliance with 43 CFR 3112.2-1(a), the second drawn DEC for the parcel obtains priority of consideration. Cf. Fred L. Smith, 19 IBLA 162 (1975).

So in this case, Green as the number two drawee for parcel NM 1005 was the first applicant whose DEC fully conformed to the requirements of the notice and of the regulations. The lease to Christensen having been cancelled, it is mandatory, under statute, that a lease for parcel NM 1005 be issued to Green as the first qualified applicant, provided he is otherwise qualified to hold a lease. Among other considerations is payment of the increased rental for noncompetitive leases effective February 1, 1977, 43 CFR 3103.3-2(a). 43 F.R. 1032.

The protest of Green was well taken and it should not have been dismissed out of hand by BLM.

The decision of BLM dismissing the protest and announcing that the land in parcel NM 1005 would be reposted in a future list of lands available is without substance, and must be set aside.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the cancellation of oil and gas lease NM 28877 to Gerald D. Christensen is affirmed, the decision to dismiss the protest of Edward L. Green is set aside and the cases are remanded for issuance of a lease to Green, all else being regular.

Douglas E. Henriques  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joseph W. Goss  
Administrative Judge

